Sierra Publishing Company d/b/a The Sacramento Union *and* Northern California Newspaper Guild, Local 52, AFL-CIO,CLC Cases 20-CA-21519 and 20-CA-21601

October 31 1988

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS JOHANSEN AND CRACRAFT

On June 29 1988 Administrative Law Judge Timothy D Nelson issued the attached decision The Respondent filed exceptions and a supporting brief and the General Counsel filed cross exceptions and a support brief

The National Labor Relations Board has delegated its authority in this proceeding to a three member panel

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge s rulings findings [1] and conclusions and to adopt the recommended Order [2] as modified

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent Sierra Publishing Company d/b/a The Sacramento Union Sacramento California its officers agents successors and assigns shall take the action set forth in the Order as modified

1 Substitute the following for paragraph 2(a)

(a) Offer Robert Saucerman Ana Sandoval Georgia Canfield, and Sue Harper immediate and full reinstatement to their former jobs or if those jobs no longer exist to substantially equivalent positions without prejudice to their seniority or any other rights or privileges previously enjoyed and make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them in the manner set forth in the remedy section of the decision

2 Substitute the following for paragraph 2(c)

(c) Afford the Guild s agents whether they are in the Respondent s employ the same rights of access for purposes of the Guild s discharging its representation function including grievance processing that the Respondent traditionally granted before October 1 1987 and make the Guild whole for any expenses it may have incurred as a result of the Respondent s unlawful unilateral changes regarding where the parties will meet to process grievances and requiring the Guild to share equally the cost of such a meeting place

3 Substitute the attached notice for that of the administrative law judge

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice

WE WILL NOT suspend discipline or discharge employees because they engage in concerted activities protected by Section 7 of the Act such as by seeking the assistance of third parties during a labor dispute

WE WILL NOT unilaterally change established conditions and practices regarding access to our premises by the Guild s representatives whether or not they are employed by us or regarding grievance processing

WE WILL NOT in any like or related manner interfere with restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act

WE WILL offer Robert Saucerman Ann Sandoval Georgia Canfield and Sue Harper immediate and full reinstatement to their former jobs or if those jobs no longer exist to substantially equivalent positions without prejudice to their seniority or any other rights or privileges previously enjoyed and WE WILL make them whole for any loss of earnings and other benefits resulting from their

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In its brief to the Board the Respondent notes that the judge failed to address its argument that the discharges of the four employees were justified because the employees were not authorized to disclose the information contained in the October 1 1988 letter that they sent to certain of the Respondent s advertisers The letter does not reveal any specific figures relating to the newspaper but rather states generally that [d]uring these trying times of bargaining advertising has suffered The newspaper as a whole is speeding downhill

The Respondent argues that regardless of whether the statement advertising has suffered is factually supportable the Respondent s internal reports regarding its advertising lineage are not a matter of public record and thus the four discharged employees acted in reckless disregard for the Respondent s business interests by publicizing such confidential information to the Respondent s advertisers We find that the information contained in the letter was not confidential and was readily available to the Respondent s advertisers The swings in the Respondent s advertising lineage are readily apparent to anyone who wishes to peruse the newspaper on a daily basis and note the amounts of news and advertising Thus we conclude that the failure of the judge to address this issue does not affect the outcome of the case

[2] The General Counsel excepted to the judge s failure to provide a make whole remedy for the unlawful unilateral change made by the Respondent concerning where the parties would meet for the purpose of processing grievances We find merit in the General Counsel s exception and amend the remedy and the Order to provide the requested make whole remedy We also amend the notice and Order to conform to the Board s traditional language

discharge less any net interim earnings plus inter est

WE WILL remove from our personnel records any references to our suspensions and discharges of those four employees and WE WILL notify them separately in writing that those actions will not be used by us against them in the future

WE WILL restore the practices and conditions prevailing before October 1 1987 that affect the Guild s access to our premises for purposes of dis charging its function as the representative of our employees including grievance processing and WE WILL make the Guild whole for any expenses it may have incurred as a result of our unlawful uni lateral changes regarding where the parties will meet to process grievances and our requiring the Guild to share equally the cost of such a meeting place

WE WILL notify the Guild and on request bar gain collectively in good faith with it before we make any further changes from those established practices and procedures

SIERRA PUBLISHING CO D/B/A THE SACRAMENTO UNION

Christine A Ralls Esq for the General Counsel
Mark H Van Brussel Esq (Wilke Fleury Hoffelt Gould and Birney) of San Francisco California for the Re spondent

DECISION

STATEMENT OF THE CASE

TIMOTHY D NELSON Administrative Law Judge I heard this 8(a)(1) (3) and (5) case in trial at Sacramento California on February 9 1988 It stems from timely unfair labor practice charges[1] filed by Northern Califor nia Newspaper Guild Local 52 AFL-CIO (Guild) against Sierra Publishing Co d/b/a The Sacramento Union (Respondent) After investigating the Regional Director for Region 20 issued separate formal complaints and later consolidated them for trial [2]

The complaints allege in substance that Respondent violated Section 8(a)(1) and (3) of the Act when it sus pended then discharged four named employees—the four employee members of the Guild s negotiating com mittee—and violated Section 8(a)(5) when it unilaterally modified existing policies relating to the processing of grievances and the Guild s access to Respondent s prem ises

The legal issue raised by Respondent s suspension and firing of the four Guild committeepersons in one requir ing an understanding of the Supreme Court s decision in *Jefferson Standard*[3] and of the Board s own subsequent decisions applying that case The issue is whether as Re spondent contends the employees October 1 letter to Respondent s advertisers seeking support during pro tracted contract negotiations was so disparaging of or disloyal to Respondent as to remove their conduct from the protections afforded generally by Section 7 of the Act to concerted appeals for third party support during labor disputes I will conclude that the Guild s employee representatives were acting well within their rights under Section 7 in their October 1 letter and that Respondent s suspension and discharge of them for dis tributing that letter violated Section 8(a)(1)

Respondent has not contested facts introduced by the General Counsel showing that Respondent made unbar gained for changes in traditional conditions respecting the Guild s access to the premises and processing of grievances Respondent has not argued any defense on brief to the unilateral change features of the complaint which I will find meritorious

On the whole record my assessments of the witnesses as they testified my judgments of probabilities and my review of the legal authorities and arguments which are well presented in the General Counsel s and Respond ent s posttrial briefs I find and conclude as follows

FINDINGS OF FACT

I BACKGROUND

Respondent publishes a daily newspaper The Sacra mento Union (The Union) in Sacramento California [4] Its only market competitor is the Sacramento Bee (The Bee) which enjoys greater circulation thereby making The Union in a phrase familiar to the parties the second paper in a two paper town

For more than 40 years the Guild has represented Re spondent s nonsupervisory employees working in its edi torial display advertising classified advertising commer cial sales circulation business office switchboard and maintenance departments A labor agreement covering that unit was due to expire in May 1985 but the Guild agreed to extend its terms for an additional year because of Respondent s financial difficulties Subsequently al though the extended agreement contemplated a wage in crease the Guild with the approval of Respondent s bar gaining unit employees agreed for the same reasons to forego the increase In March 1986 anticipating the expi ration of the extended agreement the parties began to negotiate towards a new contract an effort that still had not reached fruition when this case was tried nearly 2 years later

[1] The original charge in Case 20-CA-21519 was filed on October 16 1987 and was amended on October 27 1987 The original charge in Case 20-CA-21601 was filed on November 23 1987 and was amended on De cember 4 1987

[2] The complaint in Case 20-CA-21519 issued on November 16 1987 the complaint in Case 20-CA-21601 issued on December 30 1987 The Regional Director ordered them consolidated for trial on January 7 1988

[3] *NLRB v Electrical Workers IBEW Local 1229 (Jefferson Standard)* 346 U S 464 (1953) (Justices Frankfurter Black and Douglas in dissent)

[4] In the year ending November 30 1987 Respondent derived gross revenues exceeding $200 000 from publishing The Union and held mem bership in or subscribed to various interstate news services published various nationally syndicated feature articles and advertised nationally sold products

In August 1986 Respondent implemented a series of changes in conditions also announcing a continuing wage freeze This triggered a separate unfair labor practice charge[5] by the Guild and a complaint against Respondent that was tried before Administrative Law Judge Burton Litvack in January 1987 On October 21 1987 Judge Litvack issued a decision[6] in which he found that many of the changes implemented by Respondent were privileged as lawful postimpasse implementations of outstanding bargaining proposals but that other changes were unlawful because they had not been contemplated within Respondent s last offer and therefore had not been bargained to impasse The General Counsel took exception to Judge Litvack s decision insofar as he had concluded that a lawful impasse had been reached before Respondent implemented the changes in question the matter is pending before the Board

Although the impasse case was under submission before Judge Litvack the parties continued to meet at intervals but in the late summer and early autum of 1987 they were still apart on many issues including wages

The protracted bargaining employee dissatisfaction and associated problems facing The Union had become the subject of an editorial on August 24 in a local weekly publication the Business Journal which is subscribed to by many of Respondent s advertisers and circulates within Respondent s advertising department [7] Thus in an editorial captioned Scaife and the Union the *Business Journal* had referred to a strike looming by the [Guild] that represents the heart and guts of the newspaper to Respondent as a company that is reportedly leaking money and to [r]umors of the Union s impending demise The editorial had contrasted The Union s plight with the success of its rival The Bee opining that the real cause of the Bee s success has been the company s investment in its editorial product it put top priority on—and a lot of money in—the gathering and presentation of news Pointing blame at The Union s absentee owner Richard Mellon Scaife the Business Journal had wondered whether Scaife is merely trying to bust a union and if so to what end observing that You can t attract good journalists without good wages The Union s pay already has fallen notoriously behind the competition If the Newspaper Guild s spine is broken at the Union the paper is still left unable at present pay scales to recruit the kinds of persons it needs to turn for tunes around The Business Journal expressed the view that The Union is staffed by a small—and increasingly thin—staff of dedicated reporters editors and production people who take their profession seriously and noted elsewhere that The Union is severely under staffed and facing a growing number of holes

Respondent did not reply editorially or otherwise to the Business Journal s editorial comment

In late September concluding that negotiations were stalled the Guild staged a rally in the employee cafeteria distributing black balloons attached to cards which read MOVE This demonstration was not appreciated by Respondent s management and it did not in any case produce further movembent at the bargaining table [8]

The stage was therefore set for the events that central ly concern us which I describe next

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II THE OCTOBER 1 LETTER THE DISCHARGES

On October 1 the four employee members of the Guild s negotiating committee[9] jointly composed signed and distributed a letter to 50 of Respondent s advertisers which is reproduced here

A ONE NEWSPAPER TOWN IT S *BAD* FOR YOU

Who wants a one newspaper town? The readers don t The politicians don t As a business person and advertiser you don t

And we the employees of The Sacramento Union don t Perhaps only the Bee would like it

For nearly a year and a half we have been trying to get a fair contract with The Sacramento Union We re not asking for more money In fact we expect to continue living with a pay cut—but not the 15% to 20% cut that was imposed on us a year ago

During these trying times of bargaining the paper s circulation has plummeted good employees have left for better jobs advertising has suffered The newspaper as a whole is speeding downhill

We the employees would like to get the newspaper back on track We want to use our energies and our loyalty to help The Union struggle back onto its feet Instead we find ourselves fighting the out of town owner s edicts

Jack Bates the general manager of The Union says he wants a fair agreement but his words and his actions don t mesh We urge you to contact Jack (442–7811 or 440–0401) and express your concern for the paper s health

If something positive doesn t happen soon we may all be facing the death of The Sacramento Union

We think we can turn the paper around but it is time for you as a member of the community to lend a hand Talk it over with Jack Bates or with Bruce Winters the editor of The Union (442–7811)

[5] Case 20–CA–20546

[6] JD(SF)–110–87

[7] Advertising account salesman Saucerman one of the four Guild committeepersons whose discharge is in question testified without contradiction and I find that the Business Journal has been in the Sacramento market for two or three years It s achieved an excellent reputation among the business people and their circulation is something like 16 000 Many of the accounts [i e Respondent s advertisers] keep it on their tables int he waiting room

[8] In this case the General Counsel does not attack Respondent s course of conduct at the bargaining table and I will not make further findings regarding the bargaining history

[9] The Guild s employee committee consisted of Robert Saucerman a retail advertising salesperson who was responsible for many of Respondent s major accounts Ana Sandoval a copy editor and food columnist Georgia Canfield a classified advertising salesperson and Sue Harper whose job was not made a matter of record

Your call can help us save the second newspaper voice in Sacramento

SACRAMENTO UNION EMPLOYEES NE GOTIATING COMMITTEE—Bob Saucerman Ana Sandoval Georgia Canfield Sue Harper

(We d welcome a call too Ask for any of us at 442-7811)

On October 7 after Respondent s president and gener al manager John Bates had been shown a copy of the letter he caused his industrial relations director to issue a notice to each of the letter s authors announcing that each was suspended without pay effective immediately pending the completion of the Company s investigation into the distribution of the October 1 letter to our advertisers

During the next week Bates consulted with counsel and in counsel s presence personally interviewed the of fending authors to determine the extent each had been personally involved in composing and distributing the letter Each signer freely admitted his or her full involve ment in the joint action

On October 15 Bates wrote to each author stating in material part

> The Sacramento Union has completed its investi gation of the acts and events surrounding the Octo ber 1 1987 letter sent to the major advertisers of The Sacramento Union
>
> You are hereby notified of your discharge from The Sacramento Union for good and sufficient cause effective immediately
>
> Your endorsement of and participation in the drafting reviewing and/or sending of this letter containing half truths exaggerations and blatant misrepresentations to our major advertisers was an act of disloyalty which disparaged the newspaper and was disruptive of the newspaper s relationship with its advertisers This action which you author ized threatened not only the financial interests of The Sacramento Union but also the livelihood of all Sacramento Union employees
>
> Accordingly The Sacramento Union has no choice but to terminate your employment
>
> Cordially
> /s/ John D Bates
> John D Bates President

On October 16 Bates posted a notice to all employees announcing that the four authors had been discharged repeating many of the statements contained in the dis charge letter and averring in addition that The Sacra mento Union is in better financial shape than it has been in several years as a result of changes in the paper within the last few months The Sacramento Union is en joying modest operating profits for the first time in recent years Our projections show this trend should continue through the end of the year That notice also introduced some additional statements of Respondent s position not recorded in the discharge letters among them

> It is unfortunate that the bargaining process has spilled out into the public domain It is our position that this letter should not have been written and we should not be facing this current dilema [sic] The proper place to negotiate a contract is at the bargaining table This whole unpleasant situation should not have happened

III THE UNILATERAL CHANGES

There is no dispute that Respondent deviated from es tablished historical practice in its dealings with the Guild when without prior notice or bargaining it took the fol lowing series of actions

The first involved a number of ad hoc attempts by Re spondent to limit the Guild s hitherto unrestricted access to Respondent s premises and employee work areas As described below they began after the four committee members were fired and culminated eventually in the publication of a formal written notice on December 3 which purported to remind readers of Respondent s Policy on the matter of Access of non employees to Employee Areas of the Sacramento Union Thus in October after the four committee members were fired Industrial Relations Director James Baysinger asked Sau cerman one of the dischargees to do him a favor by having all members of the Guild committee sign in at the reception desk and obtain permission to visit employee work areas And on November 5 when Saucerman and Gerald Rocker the Guild s staff administrative officer arrived at Respondent s premises intending to post no tices on a bulletin board maintained historically by the Guild Baysinger physically blocked their entry stating first that the Guild s shop stewards could post the no tices Baysinger eventually waved them through howev er after Rocker asked (or told) Baysinger to step aside

Subsequently Saucerman did in fact visit employee work areas in his capacity as the Guild Committee s vice chair On December 2 however he received or was shown a handwritten note retained at the reception ist s desk in the main lobby which stated (emphasis in original)

> Policy
> *The* 4 are not to go past the lobby We are to call & have the people come down or if they go to an office they must be escorted [signed] Louis Hall

And on December 3 Respondent posted this formal policy statement

> Date December 3 1987
> To Department Heads Listed
> From J M Baysinger
> Subject Building Access for Non employees
>
> This is a reminder of the Policy on the matter of Access of non employees to Employee areas of The Sacramento Union
>
> The access to The Sacramento Union for all non employees general public and/or visitors is re stricted to the lobby of The Sacramento Union

Access to employee areas of The Sacramento Union beyond the lobby may be granted by a Department Head or Department Supervisor when such non employees have specific business to conduct with an employee

Procedures to be followed in cases where non employees seek access to employee areas are as follows

1) After signing in at the lobby desk the non employee will state his or her business with a specific employee

2) Lobby desk employees will contact the Department Supervisor and inform the Supervisor of the nature of the request

3) The Department Supervisor may give approval for access to that individual

4) Although all non employees should be escorted from the lobby to the department by an employee of the department circumstances may be such that the Department Supervisor might determine it is not necessary

5) All non employees must sign out before leaving the permises

If any non employee is unwilling to adhere to this policy and causes problems Larry Best Jerry Killian or Ben Black should be notified immediately of the problem

If you have any questions on this matter please contact this office on extension 442

/s/ J M Baysinger

The second category of unilateral action was manifested in November Thus on November 2 Industrial Relations Director Baysinger wrote to Ana Sandoval one of the dischargees who in her capacity as the Guild's Unit Chair had previously submitted a grievance on behalf of a unit employee and had sought a meeting to discuss the grievance Baysinger wrote in pertinent part (emphasis added) as follows

> we stand ready to meet at a time and place *off the premises* of the Sacramento Union mutually agreeable to the parties The *costs* of such a meeting place *to be shared equally* by the parties

The Guild's staff agent Rocker telephoned Baysinger in reply on November 12 then confirmed the telephone conversation in a letter to Baysinger on November 13 stating

> I advised you that your refusal to meet on company premises was a complete change which you acknowledged I offered to have the meeting at my office and you again refused I told you paying for hotel meeting rooms everytime we need to process grievances was absurd and completely inappropriate You again refused at which point I advised you that until we can resolve the location issue grievance time lines will be frozen while we review our legal options

IV ANALYSES SUPPLEMENTAL FINDINGS

A *The Discharges*

1 Legal setting the holding of *Jefferson Standard Broadcasting* the Board's further decisional gloss

The legality of Respondent's discharge of the employee members of the Guild's committee must be determined in the light of the Supreme Court's decision in *NLRB v Electrical Workers Local 1229 (Jefferson Standard)* 346 U S 464 (1953) and the Board's own subsequent decisions applying that case I will eventually supplement my findings with additional facts relevant to the *Jefferson Standard* issue but my concluding analysis of the facts will be shortened if I begin by discussing the Supreme Court's decision in some detail underscoring at intervals some of the many characterizational words phrases and distinctions employed by the Court which due to their recurrence appear to have had the greatest influence on the Court's ultimate judgment I shall also in this section identify some of the Board's own constructions of and elaborations on *Jefferson Standard* which have prima facie applicability to the facts

In *Jefferson Standard* the parties had negotiated at length reaching various intermediate impasses Eventually the union's members although not going on strike began a publicity campaign of carrying picket signs and distributing handbills which charged the company with unfairness particularly in its refusal to accept a much disputed arbitration proposal The Court found this original campaign unexceptionable noting that it was peaceful[ly] conducted and that the placards and handbills named the union as the representative of the employees in question [10] But on August 24 1949 as the Court found a new procedure was employed where Without warning several of its [the company's] technicians launched a *vitriolic attack* on the *quality* of the company's television broadcasts in handbills of which 5000 were distributed on the picket line on the public square two or three blocks from the company's premises in barber shops restaurants and busses Some were mailed to local businessmen [11] The handbills in question read

> IS CHARLOTTE A SECOND CLASS CITY?
>
> You might think so from the kind of Television programs being presented by the Jefferson Standard Broadcasting Co over WBTV Have you seen one of their television programs lately? Did you know that all the programs presented over WBTV are on film and may be from one day to five years old There are no local programs presented by WBTV You cannot receive the local baseball games football games or other local events because WBTV does not have the proper equipment to make these

[10] 346 U S at 467
Id at 467-468

pickups Cities like New York Boston Philadel phia Washington receive such programs nightly Why doesn t the Jefferson Standard Broadcasting Company purchase the needed equipment to bring you the same type of programs enjoyed by other leading American cities? Could it be that they con sider Charlotte a second class community and only entitled to the pictures now being presented to them?

WBT TECHNICIANS

The Court noted that the offending handbills *made no reference to the union to a labor controversy or to collective bargaining* and that this attack was curtailed only when the company discharged the ten workers it be lieved responsible for sponsoring or distributing the handbills [12] The Court found the issue simple namely 'whether these employees were discharged for cause The Court first observed that They were dis charged solely because they sponsored or distribut ed 5 000 handbills making a *sharp public disparaging* attack upon the *quality* of the company s product and its business policies in a manner reasonably *caclulated* to *harm* the company s *reputation* and *reduce* its *income* [13] Observing that the Board had found that the employees had not willfully misrepresented any facts underlying their disparaging report the Court noted with evident approval the Board s own *ratio decided* in finding that the discharges were lawful—that the discharged employ ees ultimate purpose—to extract a concession from the employer was *undisclosed* and that *They did not in dicate* that they *sought to secure any benefits* for them selves *as employees* by casting discredit upon their em ployer [14] Reviewing legislative history and intervening cases the Court found plain enough the legal princi ple that insubordination disobedience or disloyalty is adequate cause for discharge observing that The diffi culty arises in determining whether in fact the dis charges were made because of such a separable cause or because of some other concerted activities engaged in for the purpose of collective bargaining or mutual aid or protection which may not be adequate cause for dis charge [15]

Approving the Board s own rationale the Court reiter ated those features of the case which underscored the Board s factual conclusion that the attack on August 24 was *not part of an appeal for support in the pending dispute* [but was rather] a concerted *separable attack purporting to be made in the interest of the public rather than in that of the employees* [16] Thus the Court repeated that the discharged employees attach *related itself to no labor practice* of the company It *made no reference to wages hours or working conditions*[ ] The attack *asked for no public sympathy or support* [17] Moreover the Court found that The *fortuity of the coexistence of a labor dis pute* affords these technicians no substantial defense *While they were also union men and leaders in the labor controversy they took pains to separate those categories In contrast to their claims on the picket line* as to the labor controversy *their handbill* of August 24 *omitted all refer ence to it* The handbill *diverted attention from the labor controversy* It attacked public policies of the company which had *no discernible relationship* to that controversy The *only connection* between the handbill and the labor controversy was an ultimate and *undisclosed* purpose or *motive* that by the hoped for financial pressure the attack might extract from the company some future con cession[ ] In any event the findings of the Board ef fectively *separate the attack from the labor controversy* and treat it [i e the handbill] *solely as one made* by the com pany s technical experts *upon the quality of the company s product* As such it was an adequate a cause for the dis charge of its sponsors as if the labor controversy had not been pending The technicians themselves *so handled their attack* as thus to bring their discharge under the [for cause provisions of] Section 10(c) [18]

Finally in obiter dicta whose precise meaning is hard to discern the Court stated

> Even if the attack were to be treated as the Board has not treated it as a concerted activity wholly or partly within the scope of those men tioned in Section 7 the *means* used by the techni cians in conducting the attack have deprived the at tackers of the protection of that section when read in the light and context of the purpose of the Act [19]

In *Emarco Inc* 284 NLRB 832 (1987) the Board (Chairman Dotson dissenting) characterized the holding of *Jefferson Standard* in the following terms

> employees may engage in communications with third parties in circumstances where the communi cation is related to an ongoing labor dispute and when the communication is not so disloyal reckless or maliciously untrue to lose the Act s protection [20]

In that case the company a construction subcontractor fired two former strikers awaiting recall after the conclu sion of the strike because of statements they had made to the company s general contractor relating to the compa ny s 5 or 6 month delinquency in payments to the union s health and welfare funds a delinquency which the two employees told the general contractor had been the cause of the strike The Board accepted as true the general contractor s testimony that the two employees had also said to the general contractor these people never pay their bills the company can t finish the job and is no damn good that this job is too damn big for them It will take a couple of years to finish the job and had referred to the company s president as no damn good and as a son of a bitch [21]

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[12] Id at 468
[13] Id at 471
[14] Id at 472 quoting from 94 NLRB at 1511 where emphasis appears in the original text
Id at 475 citation omitted
[6] Id at 477
[17] Id at 476
[18] Id at 466–467
[9] Id at 477–478
[20] Id at 833
[21] Ibid see also 834 at fn 14

Observing first that the employees remarks were made in the context of and were expressly linked to the labor dispute [22] the Board found that those remarks name calling aside were not malicious falsehoods but reflected to some extent the Respondent s inability to meet its financial obligations which concern was at the heart of the employees labor dispute [and that] these remarks were not in the nature of a personal attack unrelated to the employees protest of the Respondent s labor practices [23] Moroever said the Board to the extent that the Charging Parties remarks reflect bias or hyperbole in the context of an emotional labor dis pute clearly identified as such they cannot be said to be so disloyal reckless or maliciously untrue as to lose the Act s protection [24]

The Board s *Richboro* decision supra is instructive in sofar as it suggests criteria which must be examined to determine whether employees communications with third parties are protected by Section 7 although they may contain elements involving arguable disloyalty or which might arguably tend to undermine their em ployer s business interests There the Board reversing the administrative law judge found that employee Palus zek had engaged in statutorily protected concerted activ ity—rather than unprotected disloyalty —when he sent a letter to his employer s funding source complaining of the employer s discharge of a fellow employee and stat ing in addition This matter in my opinion is repre sentative of a course of events carried out by the administration of the Richboro program which has signi fied a decrease in the quantity and quality of service to clients The Board distinguished employee Paluszek s letter from a category of protected activity [which] may be rendered unprotected when the *attitude* of the employees is *flagrantly* disloyal *wholly incommensurate* with any grievance which they may have and *manifested* by *public disparagement* of the employer s product or un dermining of its reputation [25] Thus the Board found that Paluszek s letter to the funding source contained nothing to suggest that Paluszek s *intent* was to sabotage or undermine Respondent s reputation Its *tone* was neither *malicious* nor did it *ridicule* Respondent [26] Finally the Board held that Paluszek s targeting of Re spondent s funding sources was not evidence of unpro tected disloyalty since absent a *malicious motive* Palus zek s *right to appeal to the public* is *not dependent on the sensitivity of Respondent to his choice of forum* [27]

The right of employees to seek the aid of third parties in ongoing labor disputes is likewise emphasized in other recent Board decisions even if as in *Richboro* supra the targeted parties are the employer s funding source and even if in seeking that aid the employees make attacks on their employer s product which might predictably cause customers to lose confidence in the quality of the employer s services

Particularly noteworthy in this regard is *Allied Avia tion Service Co* 248 NLRB 229 (1980) in which the air craft maintenance company fired employee Schwartz who in aid of pending grievances had written two let ters to the company s airline customers In one letter Schwartz stated that the company was creating a safety hazard of concern to the customers by requiring its em ployees to bypass a mechanical safety system designed to prevent fires during the fueling of aircraft and closed that letter by voicing the hope that you will express your opinions to management on this subject before a tragedy does occur In the other Schwartz complained of the company s alleged failure to observe union con tract mandated overtime scheduling alleging as well that there are no standard operating procedures or training programs for this site or its equipment Claim ing further that the company was performing the ma jority of its maintenance through outside contractors Schwartz suggested that the company s employees only purpose is to act as a scapegoat should a tragedy occur! The letter closed with the statement that the employees could not in good conscience continue to cover this fa cility and with the suggestion that the customer s opinion expressed to management would help

The administrative law judge had found Schwartz let ters unprotected As the Board characterized his reason ing the judge had made much of the fact that the safety aspects of the labor disputes had not been raised with the company through established channels and therefore that Schwartz letters did not bear a sufficient good faith relationship to the ongoing labor disputes to be afforded the protections of the Act [28] Disagreeing on this relationship point the Board stated first we cannot say that the safety aspects were not part of or were unrelated to the disputes Moreover the Board faulted the judge for appearing to question the efficacy of the tactics utilized by Schwartz rather than seeking to evaluate the relationship between the letters and the on going disputes emphasizing

> it is not the Board s function to appraise the potential effectiveness of the tactics utilized by em ployees in their disputes with management Thus if the communication is related to the dispute the employee sending the communication is equally protected whether such a step is taken early on in the dispute or at a later date after all internal ave nues have been exhausted [29]

The judge had also concluded that Schwartz letters amounted to unprotected disparagement of the compa

[22] In this regard the Board had also found that the company s trust fund delinquencies had been a chronic problem that employees had been required repeatedly to assert their rights to have the fund pay ments made that the delinquency which led up to the strike was merely the latest and apparently most severe in a series of delinquencies [and that] the payment which ended the strike could not have pro vided the employees with much assurance that their problem in getting the Respondent to live up to its financial obligations under the contract were at an end Id at 833–834

[23] Id at 834 citing *Richboro Community Mental Health Hospital* 242 NLRB 1267 (1979) whose holding is discussed further below

[24] Id at 834 citing *Richboro* supra and *NLRB v Owners Maintenance Corp* 581 F 2d 44 49–50 (2d Cir 1978)

[25] 242 NLRB at 1267–1268 (citations omitted emphasis added)

[26] Id at 1268 (citations omitted emphasis added)

[27] Ibid citing *St Joseph s High School* 236 NLRB 1623 (1978) (empha sis added)

[28] 248 NLRB at 229–230

[29] Id at 231

ny s service treating them as amounting to an accusa tion that the Respondent performs its services in a haz ardous manner at an airport Addressing the latter issue the Board stated

> In determining whether an employee s communi cation to a third party constitutes disparagement of the employer or its product *great care must be taken to distinguish between disparagement and the airing of what may be highly sensitive issues* There is no question that Respondent here would be sensi tive to its employees raising safety matters with its airline customers Yet we have previously held that absent a malicious motive [an employee s] right to appeal to the public is not dependent on the sensitivity of Respondent to his choice of forum [Citing *Richboro* supra] In addition the [judge s] analysis would effectively serve to pre clude employees from protesting safety matters through requests for assistance from third parties because safety particularly in the airline indus try is by its very nature a potentially volatile issue Thus although Schwartz statements regarding safety *raised delicate issues which Respondent would understandably prefer to keep out of the public eye* we find nothing in the letters which rises to the level of public disparagement necessary to deprive otherwise protected activities of the protections of the Act [30]

And in *Cordura Publications* 280 NLRB 230 (1986) the Board (Chairman Dotson dissenting) found that em ployees were protected by Section 7 in writing to their employer s parent company for assistance on a labor re lated matter even though in their letter the employees had claimed that the employer s labor practices had re sulted in limited inaccurate research which im periled the credibility and future of the product In re versing the administrative law judge who had found inter alia that the letter was a complaint against the in tegrity of the Respondent s product and the competency and good faith of local management the Board found nothing in the language of the letter which was suffi ciently *opprobrious defamatory* or *malicious* to remove the employees from the protection of the Act [31] Moreover said the Board we reject the Re spondent s contention that the letter is unprotected as it contains statements which are false as there is no evidence that if false they are *deliberately* or *maliciously* false and it is well settled that the *falsity* of a communica tion *does not necessarily deprive it of its protected charac ter* [32]

2 The law s application to these facts Respondent s contentions analyzed

Respondent would have the Board find that the Guild committee s October 1 letter constituted public dispar agement of Respondent s newspaper involving a form of disloyalty which the Supreme Court condemned in *Jefferson Standard* as beyond the protections of Section 7 of the Act For the reasons discussed below I cannot agree and would therefore find that Respondent s dis charge of the four Guild representatives violated Section 8(a)(1)

Under the foregoing cases the Guild committeepersons who authored the October 1 letter were acting under the protections of Section 7 of the Act in seeking the sup port of third parties in their ongoing labor dispute with Respondent Thus any of Respondent s arguments which depend on the proposition that the employees had no right to seek the help of outsiders must be rejected out of hand [33]

In Bates open letter to employees he characterized the discharged employees actions as being disruptive of the newspaper s relationship with its advertisers and as one which threatened the financial interests of The Sacra mento Union But to the extent Respondent was moved to discharge the four Guild spokespersons because they chose to target Respondent s advertisers with their appeal for support rather than some other third party or parties Respondent will find no comfort in the cases Thus Respondent s sensitivity to their choice of forum will not convert their otherwise protected third party appeal into an unprotected one *Richboro* supra *Allied Aviation* supra

Moreover if the effects of the letter are at all a factor properly to be considered the evidence of actual disruption is marginal at best and does not necessarily trace from the October 1 letter as opposed to the edito rial in the Business Journal or some other source Re spondent called salesperson Bob Badgely who testified that several businessmen asked him various questions about the rumor that The Union was going out of busi ness or in trouble or things to that effect and that the main concern of one of them was why isn t my regu lar salesman telling me these things [about] circula tion plummeting Badgely states he gave a basic re sponse to each questioner in substance that circula tion after a period of being a little bit soft was finally coming back And that good people were staying and good people were being hired as well [34] Respondent

[30] Id at 231 (emphasis added)

[31] Id at 231–232 citing *Allied Aviation* supra (emphasis added)

[32] Ibid citing *Veeder Root Co* 237 NLRB 1175 1177 (1978) *Patterson Sargent Co* 115 NLRB 1627 1629 (1956) (emphasis added)

[33] Respondent has not been explicit in identifying what it was about the October 1 letter which rendered it unprotected One recurring theme however appears to be that it was inherently disloyal for the Guild spokespersons to have taken the labor dispute outside This theme is perhaps most explicit in Bates October 16 open letter to The Union s em ployees where he states It is unfortunate that the bargaining process has spilled out into the public domain It is our position that this letter should never have been written The proper place to negotiate a contract is at the bargaining table Respondent has cited no authority however for the proposition that employees have no right to make public the fact that they are dissatisfied with their employer s labor practices Certainly nothing in *Jefferson Standard* suggests such a rule and the Board s most recent holdings expressly refer to the right of employees to make third party appeals

[34] Badgely also wrote a letter to Respondent s management in which he outlined his reasons he resent[ed] the October 1 letter He acknowl edged in that letter that The Union has always been a tough sell and that the October 1 letter had put salesmen on the defensive with ques tions questions they most likely have already faced due to irrespon sible statements and rumors spread by the less professional *Bee* staffers

Continued

also called salesperson David Mulvehill who testified that the advertising manager for a large supermarket account Raley's approached Mulvehill mentioned the October 1 letter and said Well I see good people have left the Union what's that make you a schmuck[?] Another Raley's manager mentioned the October 1 letter to Mulvehill commenting I know the problem is internal I know that it's a union management negotiating thing and Raley's has those same problems throughout and it's unfortunate that you have to go outside and wash your laundry with everyone else Another advertiser says Mulvehill alluded to the letter And he says hey he says would you explain some of these things that came out in this letter[?] what's it like down there at the Union[?] Mulvehill acknowledged however that he didn't lose any business as a result of such questions from his clientele

Respondent is not entirely satisfied with the evolution of the law since *Jefferson Standard* [35] and tends to dismiss many of the cases cited in the previous section of this decision as being distinguishable on the ground that their real holdings were more closely linked to their unique facts than to the broader principles specifically articulated by the Board [36]

In any case Respondent finds that the facts here closely resemble those in *Jefferson Standard* and accordingly that this case is controlled by the Supreme Court's holding and not by any of the more recent holdings of the Board Thus Respondent proposes at one point that the offending handbill in *Jefferson Standard* must have served as the primer for the October 1 letter drafted by the Guild spokespersons [37] I cannot take that suggestion seriously For one thing it would impute to the authors a perversity bordering on self destructiveness for them to have molded their communication on one which the Court had so roundly denounced Indeed if they were instructed at all by *Jefferson Standard* the Guild's agents apparently took seriously the need under that case to make abundantly clear in their own communication that they were writing as employees and union officers seeking help in a labor dispute and thereby disclosed that they sought to secure benefits for themselves as employees a disclosure which the Board sustained by the Court found to have been critically absent in *Jefferson Standard* [38]

I now focus on other allegedly disparaging features which Respondent finds in the employees October 1 letter In doing so I assume for the moment without deciding that Respondent is technically correct when it insists that neither the truth of the facts supporting the disparagement nor uttering the disparagement within the context of a plea for support will automatically bring [the employee speaker] within Section 7's protective mantle [39] Respondent appears to find most offensive in this regard that the authors portrayed The Union as a newspaper facing imminent collapse [40] I accept that the Guild's authors made statements which called into question the continuing viability of The Union but I do not accept that such statements alone would render their communication an unprotected disparagement of their employer's product Thus the Board has cautioned that great care must be taken to distinguish between disparagement and what may be the airing of highly sensitive issues *Allied Aviation* supra And here paraphrasing *Allied Aviation* it can easily be said that There is no question that Respondent would be sensitive to its employees raising matters [its own ongoing viability as a newspaper] with its [advertising] customers [but Respondent's analysis would effectively serve to preclude employees from protesting [Respondent's labor practices] through requests for assistance from third parties because [a newspaper's viability] is by its very nature a potentially volatile issue Accordingly to the extent the October 1 letter implied that The Union was facing imminent collapse this could not in itself render it unprotected [41]

(He was referring here to the fact also confirmed by Saucerman that rival salespeople for The Bee had already confronted many of Respondent's advertisers with statistics showing a worsening of Respondent's circulation)

[35] Thus Respondent finds that the standards articulated by the different tribunals are confusing superficial and contradictory factors which the Board or courts cite as dispositive in one case are discarded or ignored in the next (Br at 8)

[36] Thus for example Respondent finds in *Emarco* supra an implicit special which are innocently and thoughtlessly uttered in an emotional and isolated setting Respondent wishes however that the Board had openly articulated this exception to Jefferson Broadcasting and finds it unfortunate instead that the Board used broader language (quoted above) in restating the *Jefferson Standard* rule (communication with third parties protected when communication is related to an ongoing labor dispute and is not so disloyal reckless or maliciously untrue to lose the Act's protection)

[37] R Br at 11

[38] I do not find it important to decide whether in fact the authors of the October 1 letter or Respondent itself attempted to model their respective written statements with the teachings of *Jefferson Standard* in mind

[39] R Br 12–13 Respondent is somewhat equivocal on this point however claiming elsewhere (Br 43) that the Board errs in holding that only maliciously false statements are unprotected Respondent insists in this regard that Anyone searching in Jefferson [Standard] Broadcasting for a holding that employee communications must be maliciously untrue to lose the Act's protection will search in vain It is true that the *Jefferson Standard* court did not use the term maliciously untrue It did however speak of the vitriolic nature of the handbillers attack on the employer And a malice test is implicit in later Supreme Court decisions in which the Court has held that untrue public assertions made in a labor relations context are protected by Sec 7 even if they are defamatory and prove to be erroneous *unless made with knowledge* of their falsity *Letter Carriers v Austin* 418 U S 264 277–278 (1973) (emphasis added) See also *Linn v Plant Guard Workers* 383 U S 53 58 (1966) R Br 11 Actually in full context Respondent claims that the October 1 letter relentlessly disparages [the newspaper] product and purveys a tone of the newspaper's imminent collapse (emphasis added) However it is apparent from the letter that it does not independently disparage the newspaper—much less relentlessly so—but that it does suggest that the newspaper is failing and in need of resuscitation Thus it is clear that the imminent collapse feature of the letter is the real focus of Respondent's claim that the letter is disparaging

[40] R Br 11 Actually in full context Respondent claims that the October 1 letter relentlessly disparages [the newspaper] product *and* purveys a tone of the newspaper's imminent collapse [emphasis added] However it is apparent from the letter that it does not independently disparage the newspaper—much less relentlessly so—but that it does suggest that the newspaper is failing and in need of resuscitation Thus it is clear that the imminent collapse feature of the letter is the real focus of Respondent's claim that the letter is disparaging

[41] And compare the protected statements in *Emarco* supra at 833 where employees told their employer's general contractor that their employer was no damn good never pay their bills can't finish the job

Continued

Summing up to this point it was clearly not beyond the bounds of protected activity for the Guild s committeemembers to have (a) written a letter to Respondent s advertisers seeking help in their labor dispute and (b) raised questions about the continuing viability of The Union as a part of their appeal thereby invoking any interest which the employees arguably shared with the advertisers even if for different reasons Moreover here their manifest purpose was not to cause Respondent to lose business but rather to seek support for their bargaining demands which if accepted by Respondent would in their view boost morale ensure that motivated employees would be attracted and thus help Respondent to enhance its business position and journalistic stature in the community [42]

I deal finally with the question of the truthfulness or falsity of certain statements of fact made in the October 1 letter and with related questions of good faith or malice in the four authors choice of language and themes used in their appeal for advertisers support Here I will also discuss the factual underpinnings of statements made in the fourth paragraph where the authors asserted as fact During these trying times of bargaining the paper s circulation has plummeted good employees have left for better jobs advertising has suffered The whole newspaper is speeding downhill

I observe first that Respondent has been somewhat equivocal in attacking any of those statements as false Thus Respondent s main point appears to be that it would not matter whether they were true [43] Even if Respondent is correct however the basis on which the four employee authors made their statements must be given at least some attention (as Respondent does and I do below) in assaying the good faith or malice which attended their communication

I find it initially relevant to the overall loyalty issue that the public suggestion that The Union s labor problems threatened its viability was not one which first appeared in the October 1 letter Rather that overall theme had already publicly surfaced in the business and advertising community in the Business Journal s August 24 editorial [44]

Regarding the statement that circulation has plummeted during the lengthy period of bargaining for a new contract the authors had relied in part on Saucerman s ongoing experience and knowledge of circulation trends gained in his capacity as retail account salesman and in part on figures published periodically in the accepted industry Bible the Audit Bureau of Circulation (ABC) The ABC Report for the year ending March 31 1987 showed that Respondent s daily circulation had declined from a high (in second quarter 1984) of 108 651 to 89 753 by March 31 1987 Confining the picture to the period beginning March 1986 (when bargaining for a new contract first began to the end of March 1987) daily circulation had declined from 90 468 to 89 953 I note also in this regard that Respondent appears to quarrel only with the word plummet preferring to use the term decline to describe its circulation losses [45] Clearly the only debate here is over a term of characterization for an acknowledged loss in circulation At worst therefore the October 1 letter s reference to a plummeting circulation involves mere hyperbole and cannot be taken as evidence of a reckless or malicious intent on the part of its authors

That advertising has suffered was an opinion held by among others salesperson Saucerman Respondent sought to rebut this by introducing lineage figures reflecting that the average number of advertising lines per edition had increased in the previous year If the lineage figures allow a finding that the letter s authors were in error in making the more general claim that advertising had suffered those figures do not suffice to demonstrate that the authors made that statement maliciously or recklessly Indeed Respondent s retail advertising manager Taylor elsewhere stated that the advertising trend was down in the period October 1986 to October 1987 thereby tending to negate the notion that the four employees statement was reckless or malicious

That good employees have left for better jobs was likewise a characterization of debatable truthfulness but no one disagrees that a substantial number of employees had left Respondent s employ during the lengthy period the parties had operated without a new labor agreement It is especially difficult moreover to contend that a statement in a third party appeal about worsening employee morale could evidence malicious or reckless disparagement of an employer s product or business reputation

I have noted that Respondent has been somewhat scattered in its attacks on the October 1 letter as involving unprotected disparagement This is best evidenced in general manager Bates testimony Questions about his own reaction to the October 1 letter Bates was hard to pin down The General Counsel eventually challenged him with this question It didn t matter whether the as

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statements which also plainly implied that their employer faced imminent collapse and which clearly contained more aggravated elements of disparagement than any to be found in the October 1 letter

[42] Although it is probably evident from the letter itself I note in this regard that the letter s authors presumed as I do that Respondent s advertisers would also have an economic interest in Sacramento remaining a two newspaper town if for no other reason than that competition between The Bee and The Union would tend to keep advertising rates down

[43] Respondent relies on the Court s decision in *Jefferson Standard* and the Board s holdings in *Patterson Sargent Co* 115 NLRB 1627 (1956) and *Tyler Business Services* 256 NLRB 567 (1981) In the latter case the Board reiterated the *Patterson Sargent* holding that truth or falsity of the communications is not material to the test of their protected character Id at 568 There the Board found that employee Lane s communication was protected even though while complaining about his employer s treatment of other employees Lane had passed on to the agent of his employer s customer the rumor that his employer s president and vice president were having an affair The Board found it unnecessary to decide whether the rumor of the affair was accurate or inaccurate Rather finding that Lane s remarks did not relate to the employer s products or operations the Board found that the remarks did not display the requisite indicia to constitute a deliberate attempt to impugn the company Ibid

[44] I do not imply that it would have been unprotectedly disloyal for the Guild s committeepersons to have been first in print with the statement that Respondent was facing a business collapse as a result of its ongoing labor strife That question is simply not raised by these facts

[45] R Br 6

sertions in the October 1st letter were true or not did it? He replied

> I think it—I think it was the total letter Whether the circulation was up or down advertising was up or down or any of those things which are arguable it was the tone of the letter that I think was the problem

Bates concession that the assertions in the October 1 letter were arguable is itself enough to deflate the notion that the letter contained recklessly or maliciously false elements Bates eventual reliance on the tone of the letter requires little further comment Plainly the letter s authors did not adopt a tone of general disparagement of The Union as a journalistic effort they did not ridicule its managers nor the quality of its product The letter s tone is overall remarkable for the absence of such attacks and for the positive way in which its authors chose to make their pitch for support from Respondent s advertisers stressing that everyone had an interest in seeing The Union survive and prosper

In all these circumstances therefore I conclude that the October 1 letter contained an appeal for third party support which did not lose its protected status merely because it suggested that the Union was in danger of going out of business unless it could restore employee morale by showing greater flexibility at the bargaining table It follows that by suspending and then discharging the four authors of the letter Respondent impermissibly interfered with restrained and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act [46]

B *Unilateral Changes*

It is plain that Respondent without prior notice to the Guild materially changed established practices when (a) it invoked non employee access rules to limit the circumstances and conditions under which the Guild s agents could have access to Respondent s premises [47] and (b) insisted that grievance meetings henceforth be held off premises at commercial meeting sites Established practices respecting access of nonemployee union representatives for purposes of discharging the Union s representative function including grievance processing cannot be changed unilaterally by the Employer [48] Respondent s admitted failure to notify the Union before imposing those changes therefore violated Section 8(a)(5) substantially

Conclusions of Law

1 Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act

2 The Guild is a labor organization within the meaning of Section 2(5) of the Act

3 At all times material the Guild has been and is the exclusive representative within the meaning of Section 9 of the Act of an appropriate unit of Respondent s employees as specifically described in successive collective bargaining agreements between those parties and as summarized in section II B of this decision

4 By suspending on October 7 and by discharging on October 15 1987 its employees Robert Saucerman Ana Sandoval Georgia Canfield and Sue Harper and by each of those acts Respondent interfered with restrained and coerced employees in the exercise of rights guaranteed in Section 7 of the Act and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act

5 By unilaterally imposing changes in established practices affecting the right of the Guild s agents to have access to and process grievances within Respondent s premises Respondent has failed and refused to bargain collectively in good faith and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act and derivatively Section 8(a)(1) of the Act

The Remedy

Having found that Respondent violated Section 8(a)(1) by suspending and then discharging the four authors of the October 1 letter and that Respondent violated Section 8(a)(5) by instituting unilateral changes I shall recommend that Respondent be ordered to cease and desist and to take certain affirmative action to restore the status quo ante the violations including offering full reinstatement to the four discharged employees and purging from their employment records any references to their alleged misconduct or disciplinary actions taken against them in connection with the October 1 letter [49] Additionally those employees shall be made whole with interest for any loss of pay or other benefits they may have suffered as a result of the discrimination practiced against them since October 7 when they were suspended to the date on which Respondent shall have discharged its reinstatement obligations [50] I shall also order that Respondent rescind outstanding access policies to the extent they purport to restrict access by the Guild s agents (whether they be in the employ of Respondent) to its premises for purposes of discharging the Guild s legitimate representative functions and that Respondent restore to the Guild s agents the same degree of access under the same condi

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[46] Because it would not affect the remedy or the Order I do not decide whether Respondent s discharge of the four employees constituted an independent violation of Sec 8(a)(3) of the Act *Emarco* supra at 835 fn 18

[47] I ignore Respondent s implicit attempt to claim in its December 3 posting of its nonemployee access rules that the rules are mere reminders regarding some longstanding policy That notice does not contradict the facts demonstrated in the General Counsel s case that any such policies were never previously invoked to limit access by the Guild s agents in the course of their representation of unit employees Accordingly even if Respondent had traditionally enforced its rule with respect to nonemployees generally (a matter about which I make no finding) its historical practice of allowing Guild representatives access to the premises was substantially changed when it began to apply such rules to the Guild s agents

[48] *Granite City Steel Co* 167 NLRB 310 (1967) cf *National Broadcasting Co* 276 NLRB 118 at fn 3 (1985)

[49] See *Sterling Sugars* 261 NLRB 472 (1982)

[50] Backpay shall be computed in the manner set forth in *F W Woolworth Co* 90 NLRB 289 (1950) with interest as prescribed in *New Horizons for the Retarded* 283 NLRB 1173 (1987)

tions which prevailed traditionally before on or about October 1 1987 Similarly I shall prescribe in the order that Respondent consistent with practice prevailing before October 1987 shall upon request meet with the Guild s agents at its premises for purposes of processing grievances Finally I shall provide that Respondent give the Guild adequate advance notice and upon request bargain collectively in good faith with respect to any future changes Respondent may contemplate imposing relating to the Guild s access or to grievance processing

On these findings of fact and conclusions of law and on the entire record I issue the following recommend ed[51]

ORDER

The Respondent Sierra Publishing Company d/b/a The Sacramento Union Sacramento California its offi cers agents successors and assigns shall

1 Cease and desist from

(a) Suspending disciplining or discharging employees because they engage in concerted activity protected by Section 7 of the Act

(b) Making unilateral changes to restrict the access to its premises of agents of Northern California Newspaper Guild Local 52 AFL–CIO for purposes of discharging the Guild s legitimate representative function including by refusing to meet with the Guild s agents on its prem ises for purposes of processing grievances

(c) In any like or related manner interfering with re straining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act

2 Consistent with the remedy section of this decision take the following affirmative action necessary to effec tuate the policies of the Act

(a) Offer immediate full and unconditional reinstate ment to their former jobs to Robert Saucerman Ana Sandoval Georgia Canfield and Sue Harper without prejudice to their seniority or other rights and privileges discharging if need be other employees in order to make room for them and make those employees whole with interest for any losses in pay or other benefits those employees may have suffered as a consequence of Re spondent s unlawful suspension and discharge of them

(b) Remove from its files any reference to the unlawful discharges and notify the employees in writing that this has been done and that the discharges will not be used against them in any way

(c) Afford the Guild s agents whether they are in Re spondent s employ the same rights of access for pur poses of the Guild s discharging its representative func tion including grievance processing which Respondent traditionally granted before October 1 1987

(d) Notify the Guild and on request bargain collec tively in good faith with the Guild respecting any changes Respondent may wish to impose affecting the Guild s traditional access privileges and grievance proc essing procedures

(e) Preserve and on request make available to the Board or its agents for examination and copying all pay roll records social security payment records timecards personnel records and reports and all other records nec essary to analyze the amount of backpay due under the terms of this Order

(f) Post at its Respondent s place of business copies of the attached notice marked Appendix [52] Copies of the notice on forms provided by the Regional Director for Region 20 after being signed by the Respondent s au thorized representative shall be posted by the Respond ent immediately upon receipt and maintained for 60 con secutive days in conspicuous places including all places where notices to employees are customarily posted Rea sonable steps shall be taken by the Respondent to ensure that the notices are not altered defaced or covered by any other material

(g) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Re spondent has taken to comply

[51] If no exceptions are filed as provided by Sec 102 46 of the Board s Rules and Regulations the findings conclusions and recommended Order shall as provided in Sec 102 48 of the Rules be adopted by the Board and all objections to them shall be deemed waived for all pur poses

[52] If this Order is enforc d by a judgment of a United States court of appeals the words in the notice reading Posted by Order of the Nation al Labor Relations Board shall read Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board